

BEFORE THE OPEN GOVERNMENT COMMISSION
OF THE CITY OF ALAMEDA

In re:
The Complaint of Serena Chen

Serena Chen,
Complainant

The City of Alameda,
Respondent

Case No. 18-02

DECISION OF THE
OPEN GOVERNMENT COMMISSION
OF THE CITY OF ALAMEDA

The above entitled matter came on for hearing and a decision by the Open Government Commission of the City of Alameda under the Sunshine Ordinance of the City of Alameda, Section 2-93.2 (b), Alameda Municipal Code. (All further references to Section numbers are to the Alameda Municipal Code.)

Facts

In compliance with the Sunshine Ordinance, the City Clerk on October 4, 2018 published the agenda and supporting materials for the City Council's meeting on October 16, 2018. In relevant part, the title for Agenda item 6-G provided that there would be a public hearing to consider the introduction of an ordinance to amend the Municipal Code in a number of respects concerning cannabis businesses, for example, by adding cannabis retail businesses as conditionally permitted uses in certain zoning districts, by adding two "delivery-only" Cannabis Retail Businesses as a conditionally permitted use in the C-M, Commercial-Manufacturing Zoning

District, eliminating the dispersion requirements for “delivery-only” cannabis businesses. The agenda and supporting documents for this item are attached as Exhibit 1.

The City Council conducted a public hearing on these items on October 16, 2018. During the public hearing, Council resolved to include in the amendments a modification to the amendment allowing two “delivery-only” dispensaries, such that these cannabis businesses would be required to offer delivery of cannabis (“delivery required”) and would also be open to the public, in recognition that the State and local requirements for either (“delivery-only” versus “delivery required”) would be the same. Following the close of the public hearing the City Council introduced on first reading an ordinance amending various sections of the Municipal Code concerning cannabis businesses, including that two “delivery required” dispensaries, which would be open to public, be allowed. In response to a question about whether the ordinance could be introduced that evening with the inclusion of the two “delivery required” dispensaries as conditionally permitted uses, the City Attorney advised yes.

On October 30, 2018, Serena Chen timely filed a Sunshine Ordinance Complaint against the Alameda City Council concerning an alleged violation of a public meeting on October 16, 2018, citing a violation of Section 2-91.5, Agenda Requirements. The complaint states the City Council voted to add two additional cannabis dispensary permits without prior notification. More specifically, the complaint states nowhere in the agenda title or text of the staff report concerning

cannabis businesses was there any mention that the number of “full-service marijuana dispensaries” would be increased.

The complaint cites to Section 2-90.1 of the Municipal Code that provides that one of the goals of the Sunshine Ordinance is to ensure that Alameda residents have the opportunity to address the Council prior to a decision being made. The complaint also cites to Section 2-91.5 of the Municipal Code that provides agenda items are to be contain a meaningful description of each item of business to be transacted and that the description of such items be sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information about the item. A copy of the complaint is attached as Exhibit 2.

In response to the complaint, the City Attorney’s Office emailed Ms. Chen that the ordinance addressed in her complaint was not final (“are being amended”), but would be on the Council’s November 7, 2018 agenda for “second reading”. She was invited to attend and be heard concerning the ordinance amendments, or to submit comments in writing if she could not attend, in addition to being furnished with materials to do so. A copy of that response is attached as Exhibit 3. A copy of the Council’s November 7, 2018 agenda and supporting materials is attached as Exhibit 4.

On November 7, 2018, Ms. Chen indicated she would appear at the City Council meeting to address the Council concerning the amendments. After discussion, Council adopted the ordinance as presented in the November 7 agenda.

Procedure

Under the Sunshine Ordinance, when an official complaint has been filed, the Open Government Commission, created under the Sunshine Ordinance, hears the complaint and renders a formal written decision. The complainant and the City shall appear at a hearing. During the hearing, the Open Government Commission considers the evidence and the arguments of the parties before making its decision. Section 2-93.2 (b). The Commission conducted the hearing on November 14, 2018 and considered the evidence and arguments of Ms. Chen and the City.

Discussion

One of the goals of the Sunshine Ordinance is that residents have the opportunity to address the City Council prior to decisions being made. Section 2-90.1, AMC. Here, Ms. Chen had, and took (or should have taken), the opportunity on November 7, 2018, to address the City Council about her concerns about the amendments to the cannabis ordinances prior to the City Council making a final decision on the amendments. Accordingly, we find no violation of Section 2-90.1, AMC.

Concerning the agenda title on October 16, 2018, the title included numerous proposed changes to the cannabis ordinances including the possibility of cannabis retail businesses being conditionally permitted in certain zoning districts, increasing the number of cannabis retail businesses and eliminating the dispersion

requirements for certain cannabis businesses. Given the scope of these revisions, a person of average intelligence and education who had concerns about the number or types of cannabis businesses that the Council would consider would have attended the meeting on October 16 or sought more information. More specifically as to Ms. Chen's complaint, the agenda description was meaningful as it apprised members of the public that there would be an increase in the number of dispensaries that would offer delivery services, and the City Council's action or discussion fell squarely within the ambit of that brief, concise description. In addition, Ms. Chen was offered the opportunity to and did attend the Council meeting on November 7, where she was given an opportunity to provide her concerns, and did do so, about allowing full-service cannabis businesses before the Council took final action on the ordinance amendments. Accordingly, there was no violation of Section 2-91.5, AMC.

Decision

The City Council did not violate Section 2-90.1 or Section 2-91.5 of the Alameda Municipal Code as set forth in Ms. Chen's complaint of October 30, 2018. The complaint, therefore, is determined to be unfounded.

Signatures are on the following page.

Dated: November 14, 2018

Heather Little, Chair

Paul Foreman, Member

Mike Henneberry, Member

Irene Deiter, Member

Bryan Schwartz, Member